

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tessa Yesselman	Team: Squad #3	CCRB Case #: 201800734	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 01/29/2018 6:14 AM	Location of Incident: § 87(2)(b) over the phone	Precinct: 121	18 Mo. SOL 7/29/2019	EO SOL 7/29/2019	
Date/Time CV Reported Mon, 01/29/2018 7:35 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 01/29/2018 9:25 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Roberto Pagan	1731	946089	WARRSEC
2. DT3 Salvator Granata	195	936692	WARRSEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Robert White	5993	942836	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Roberto Pagan	Abuse: Detective Roberto Pagan entered § 87(2)(b) in Staten Island.	§ 87(2)(b)
B.DT3 Roberto Pagan	Abuse: Detective Roberto Pagan searched § 87(2)(b) in Staten Island.	§ 87(2)(b)
C.DT3 Salvator Granata	Discourtesy: Detective Salvator Granata spoke discourteously to § 87(2)(b) Hernandez inside § 87(2)(b) in Staten Island.	§ 87(2)(b)
D.DT3 Roberto Pagan	Discourtesy: Over the phone, Detective Roberto Pagan spoke discourteously to § 87(2)(b)	§ 87(2)(b)
E.DT3 Roberto Pagan	Discourtesy: Over the phone, Detective Roberto Pagan acted discourteously toward § 87(2)(b)	§ 87(2)(b)

Case Summary

On January 29, 2018, § 87(2)(b) filed the following complaint over the phone with the Internal Affairs Bureau, generating IAB log #2018-4371, as well as over the phone with the CCRB.

On January 29, 2018, at approximately 6:14 a.m., § 87(2)(b) awoke to someone banging on the door to her apartment, located on the § 87(2)(b) in Staten Island. § 87(2)(b) opened the door and saw Detective Roberto Pagan, Detective Salvator Granata, and Detective Robert White, all from the Warrants Section. Det. Pagan stuck his foot in the door, so that § 87(2)(b) could not shut the door. The officers asked for “§ 87(2)(b) § 87(2)(b) denied knowing or being § 87(2)(b) and stated that she would get her identification. She told the officers that she would be right back at which point, Det. Pagan pushed the door open, and all three officers entered and searched the home (**Allegations A and B: Abuse of Authority**, § 87(2)(g) As the officers were leaving, they asked § 87(2)(b) where § 87(2)(b) her boyfriend, was. § 87(2)(b) § 87(2)(b) responded that she thought the officers were at the residence looking for § 87(2)(b) § 87(2)(b) and expressed discontent that this was what her tax dollars were going towards. Det. Granata allegedly responded, “Like you pay taxes” (**Allegation C: Discourtesy**, § 87(2)(g)

On January 29, 2018, at approximately 10:00 a.m., § 87(2)(b) s boyfriend, § 87(2)(b) § 87(2)(b) called Det. Pagan and asked about the statement he made to § 87(2)(b) in regards to him telling her, “Like you pay taxes.” Det. Pagan allegedly responded, “I don’t give a shit,” and disconnected the phone call (**Allegations D and E: Discourtesy**, § 87(2)(g)

No arrests were made or summonses issued as a result of this incident.

The investigation obtained cell phone video of this incident. See allegations below for the corresponding footage.

This case was originally assigned to Investigator Nathan Winshall and was reassigned to Manager Monique West following Investigator Winshall’s departure from the agency. On August 8, 2018, this case was reassigned to Investigator Tessa Yesselman.

Findings and Recommendations

Allegation (A) Abuse of Authority: Detective Roberto Pagan entered § 87(2)(b) in Staten Island.

Allegation (B) Abuse of Authority: Detective Roberto Pagan searched § 87(2)(b) in Staten Island.

It is undisputed that Det. Pagan, along with Det. Granata and Det. White entered and searched the incident location using a bench warrant associated with a case in which Det. Pagan was the lead investigator.

§ 87(2)(b) (**01 Board Review**) stated that after hearing knocking at her door, she opened her door a foot or two and an officer placed his foot in the door. The officer asked § 87(2)(b)

§ 87(2)(b) if § 87(2)(b) lived in the residence. § 87(2)(b) denied knowing who § 87(2)(b) was. The officer told § 87(2)(b) that § 87(2)(b) was her. § 87(2)(b) informed the officers that if they were looking for someone they needed a warrant and that she would not let them into her home without one but would retrieve her identification. As § 87(2)(b) was telling the officers that she would be right back, an officer pushed the door open and all three officers entered and searched the location.

Det. Pagan (**03 Board Review**) stated that he visited the residence with an active bench warrant for § 87(2)(b) and an active I-Card for § 87(2)(b). Det. Pagan received the bench warrant on the same day as the I-Card. The bench warrant listed § 87(2)(b) address as this incident location, but the warrant was dated 2012. Besides the address on the bench warrant, Det. Pagan had no other reason to believe that § 87(2)(b) lived at the location, and he did not conduct any searches to determine whether she still lived there, or otherwise conduct any research to verify § 87(2)(b) current address. There had been no attempts between 2012 and the day of the incident to find § 87(2)(b). To Det. Pagan's understanding, he was allowed to enter and search the location due to the active bench warrant. Det. Pagan believed § 87(2)(b) lived at the location because he thought that § 87(2)(b)'s parents may have told him as much during a previous investigative visit while looking for § 87(2)(b). Det. Pagan was shown his DD5's, which show that Det. Pagan spoke with § 87(2)(b) sister at the location, and she declined to provide any contact information for § 87(2)(b) or § 87(2)(b) § 87(2)(e).

§ 87(2)(b) Det. Pagan did not attempt to verify that this was § 87(2)(b)'s address before going to the location. Upon arriving to the location, § 87(2)(b) opened the door. She was "a little combative," stating that the officers did not have a right to be at her door and after two minutes, attempted to close the door. Det. Pagan stuck his foot in the door to prevent it from closing. After explaining to § 87(2)(b) three or four additional times that they had a right to be there because of the bench warrant, § 87(2)(b) stepped back from the door, threw her hands in the air, and stated, "This person's not here. Come in." The officers then searched the residence. Det. Pagan did not mention § 87(2)(b) while gaining entry to the residence.

During her telephone call to 911, § 87(2)(b) stated that the officers had "forced" their way inside of her apartment, because an officer had put his foot in the door (**21 Board Review**).

The I-Card (**12 Board Review**) for § 87(2)(b) was submitted by Detective Sean Desabato, of the grand larceny squad. The I-Card states that there is probable cause to arrest § 87(2)(b) and lists § 87(2)(b)'s address as § 87(2)(b), Staten Island.

Cell phone video (**20 Board Review**), labeled below as snagit1, taken by § 87(2)(b) shows a conversation between § 87(2)(b) and Det. Pagan. At 00:09, Det. Pagan and § 87(2)(b) are speaking over each other. Det. Pagan is standing in the doorway and states, "So where's § 87(2)(b)?" § 87(2)(b) simultaneously states, "You didn't show me a warrant. You didn't give me the right name." Det.

Pagan says, "I showed you." § 87(2)(b) responds, "You showed me § 87(2)(b). So go ahead." Det. Pagan corrects, "§ 87(2)(b)." § 87(2)(b) responds, "§ 87(2)(b), excuse me. You didn't show me a warrant. Where's the warrant?" Det. Pagan responds, "So where's § 87(2)(b)?" § 87(2)(b) states, "You're looking for § 87(2)(b)." Det. Pagan responds, "And § 87(2)(b)." Det. Pagan and § 87(2)(b) continue questioning each other about the warrant and the whereabouts of the § 87(2)(b) for a few more seconds. § 87(2)(b) is heard speaking, but is not pictured. At the 00:25 mark, the camera shifts towards Det. Pagan's hands, where he is holding a piece of white paper. He unfolds it and all that can be seen on it is a large thick black line at the bottom of the page. § 87(2)(b) states, "No, get out of my house." Det. Pagan responds, "Just to let you know, we have a warrant." § 87(2)(b) responds, "They forced themselves in. No."



Snagit1.mp4

Det. Pagan's DD5's (**13 Board Review**) show on January 18, 2018, § 87(2)(b) called Det. Pagan from a private telephone number and stated that he would contact Det. Pagan at a later time to arrange a time to meet and discuss the I-Card. § 87(2)(b) declined to provide his address or telephone number. On January 18, 2018, Det. Pagan subpoenaed his telephone records to obtain the telephone number § 87(2)(b) called from, and obtained the telephone number on January 24, 2018. On January 29, 2018, Det. Pagan went to § 87(2)(b) § 87(2)(e), § 87(2)(f) § 87(2)(b). Det. Pagan brought an active bench warrant for § 87(2)(b) listed to the same location. Det. Pagan interacted with § 87(2)(b) and informed her of the bench warrant for § 87(2)(b) § 87(2)(b) allowed the officers inside to enter and search for § 87(2)(b) Det. Pagan conducted a protective sweep with negative results. Det. Pagan asked § 87(2)(b) about § 87(2)(b) and she became irate and told the officers to leave. § 87(2)(b) asked Det. Pagan for his shield number, and he provided it. Det. Pagan then visited § 87(2)(b)'s upstairs neighbor, § 87(2)(b) who stated that he did not know § 87(2)(b) and does not live at the location, and that § 87(2)(b) lived downstairs with § 87(2)(b) On January 29, 2018, § 87(2)(b) called Det. Pagan and told Det. Pagan not to go to his residence anymore, and that he was going to file a complaint with IAB and CCRB.

The bench warrant (**11 Board Review**) for § 87(2)(b) is from 2012, and lists § 87(2)(b) as her address.

A bench warrant permits entry into what the police reasonably believe to be the suspect's residence provided that at the time of the entry the police reasonably believe that the suspect is present. The reasonableness of this belief is based upon the amount of information available to the officer at the time of the entry, as well as the age of this information. People v. Smith, 806 N.Y.S. 2d 447 (2005) (**08 Board Review**).

Submission to authority does not constitute consent. People v. Farquharson, 901 N.Y.S.2d 901 (2009 — Sup. Ct. Bronx County) (**05 Board Review**).

Consent must be voluntary in that it cannot be produced by intimidation or harassment. Florida v. Bostick, 501 U.S. 429 (1991) (**07 Board Review**).

In order to demand entry to the dwelling of a third party in order to execute an arrest of another person, the officer must additionally possess a search warrant. Without a search warrant, an officer may only enter a third party's dwelling if he has consent or there are exigent circumstances. People v. Rodriguez, 19 Misc. 3d 302 (2008) (**19 Board Review**).

According to McBride, the following factors have been used to determine if exigent circumstances exist: (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause to believe that the subject committed the crime; (4) strong reason to believe that they suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry. People v. McBride, 14 N.Y.3d 440 (2010) (**06 Board Review**).

§ 87(2)(g)
[REDACTED]

Allegation (C) Discourtesy: Detective Salvator Granata spoke discourteously to § 87(2)(b)

§ 87(2)(b) (**01 Board Review**) stated that when the officers initially arrived, they asked for § 87(2)(b).” As the officers were leaving, Det. Pagan asked § 87(2)(b) about § 87(2)(b). § 87(2)(b) was angry that the officers had arrived at her home looking for § 87(2)(b) and did not mention § 87(2)(b) until after they had entered and searched her residence, and were leaving. Det. Pagan and Det. Granata exited § 87(2)(b)'s apartment, and were walking up the stairs to speak to her upstairs neighbor. § 87(2)(b) sarcastically stated that she was happy her tax dollars were going towards this kind of police work, and Det. Granata responded, “Like you pay taxes.” § 87(2)(b) asked Det. Granata if his comment was racial.

Det. Granata (**04 Board Review**) stated that he was standing in the vestibule outside of § 87(2)(b)'s apartment while Det. Granata and § 87(2)(b) spoke. § 87(2)(b) became upset that the officers were in her apartment, and told the officers to leave. Det. Granata and Det. Pagan then went upstairs to speak to § 87(2)(b)'s neighbor. § 87(2)(b) stated, "This is what you guys do? I pay taxes," and Det. Granata responded, "I pay taxes too." Det. Granata did not state, "Like you pay taxes."

Det. Pagan (**03 Board Review**) stated that as he and Det. Granata were walking up the stairs to speak to § 87(2)(b)'s neighbor, § 87(2)(b) stated, "This is what my taxes are going to. This is bullshit," and Det. Granata responded, "I pay taxes too." Det. Pagan did not hear Det. Granata say, "Like you pay taxes." After Det. Granata responded to § 87(2)(b), § 87(2)(b) screamed, "What was that? What was that?" Later that day, § 87(2)(b) called Det. Pagan and told him that he had been discourteous to his family. § 87(2)(b) did not specifically say that an officer had made a racist remark.

Det. White (**18 Board Review**) stated that he heard § 87(2)(b) say, "Don't you have better things to do? My taxes pay your salary," and that in response, Det. Granata responded, "I pay taxes too." Det. White did not hear Det. Granata state, "Like you pay taxes." § 87(2)(b) was yelling at the officers during this interaction, but she did not complain that an officer made a racist remark.

Cell phone video (**20 Board Review**), labeled below as snagit1, taken by § 87(2)(b) shows Det. Pagan and Det. Grenata walking up the stairs outside of § 87(2)(b)'s apartment. § 87(2)(b) is heard speaking, but is not pictured. At :54, § 87(2)(b) states, "Perfect, this is what my tax paying money goes to." At :56, Det. Grenada is heard saying something in response to § 87(2)(b) but his words are inaudible in the video. At :57, § 87(2)(b) responds, "Yeah I do. Oh, is that a racial comment? That's a racial slur? Excuse me, I'm sorry? I don't pay my taxes? What was that? I'm sorry, what was that? A racial slur? Fucking assholes." The video then ends.



Snagit1.mp4

Patrol Guide Procedure 203-09 states that officers must be courteous and respectful when speaking to members of the public (**17 Board Review**).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g)

Allegation (D) Discourtesy: Over the phone, Detective Roberto Pagan spoke discourteously to § 87(2)(b)

Allegation (E) Discourtesy: Over the phone, Detective Roberto Pagan acted discourteously toward § 87(2)(b)

§ 87(2)(b) (01 Board Review) stated that she called Det. Pagan on threeway along with § 87(2)(b) § 87(2)(b) did not participate in the telephone call, and to the best of § 87(2)(b)'s knowledge, Det. Pagan did not know that she was on the call. § 87(2)(b) stated that he had heard that an officer had said something racist to § 87(2)(b) and Det. Pagan responded by saying, "I don't give a shit." § 87(2)(b) told Det. Pagan that he had "fucked up," by looking for him, because he did not have a warrant. Det. Pagan then disconnected the call.

§ 87(2)(b) (02 Board Review) provided a telephone statement to the investigation. § 87(2)(b) stated that he and § 87(2)(b) called Det. Pagan on three way, and that he told Det. Pagan that he had scared his wife, daughter, and sister by coming to their home, and that they had heard when one of the officers was being racist. Det. Pagan responded by saying, "Oh, I don't give a shit." § 87(2)(b) stated, "Oh, so that's what you want to go with?" and Det. Pagan responded, "Yeah, I don't give a shit." Det. Pagan then disconnected the call.

Det. Pagan (03 Board Review) stated that § 87(2)(b) called him and said that the officers should not have been at his house because he does not have a warrant. Det. Pagan explained to § 87(2)(b) that he had an I-Card for his arrest, and told § 87(2)(b) to turn himself in. § 87(2)(b) told Det. Pagan that he had been discourteous to his family, but did not specify what he meant. § 87(2)(b) then hung up on Det. Pagan.

Det. Granata (04 Board Review) and Det. White (18 Board Review) did not overhear a telephone call between Det. Pagan and § 87(2)(b). Det. Granata and Det. White did not hear Det. Pagan state, "I don't give a shit," and did not observe Det. Pagan hang up on § 87(2)(b).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- Det. Pagan has been a member of service for ten years, and has three previous allegations with no substantiations. § 87(2)(g)
- Det. Granata has been a member of service for thirteen years, and has five previous allegations. § 87(2)(g)
- This is the first CCRB complaint to which § 87(2)(b) has been party (15 Board Review).
- This is the first CCRB complaint to which § 87(2)(b) has been party (14 Board Review).

Page 7

CCRB Case # 201800734

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of August 27, 2018, a FOIL request to the Office of the Comptroller is pending.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Squad No.: 3

Investigator:			
	Signature	Print Title & Name	Date

Squad Leader:			
	Signature	Print Title & Name	Date

Reviewer:			
	Signature	Print Title & Name	Date